



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 30 2004

REPLY TO THE ATTENTION OF:

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Peter Morten, Vice-President
Morgan Advanced Ceramics, Inc.
232 Forbes Road
Bedford, Ohio 44146

Re: Morgan Advanced Ceramics, Inc.
Consent Agreement and Final Order
Docket Number: ~~CAA-05-2004~~ 0057

Dear Mr. Morten:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) that resolves the above-described case regarding Morgan Advanced Ceramics, Inc. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on SEP 30 2004.

Pursuant to paragraphs 68 through 70 of the CAFO, Morgan Advanced Ceramics, Inc. must pay the \$133,342.00 civil penalty within 30 days of SEP 30 2004. Your check must display the case docket number, ~~CAA-05-2004~~ 0057, and the billing document number, 050304046.

Please direct any questions regarding this case to Susan Tennenbaum, Associate Regional Counsel, (312) 886-0273.

Sincerely yours,

William L. MacDowell, Chief
Air Enforcement and Compliance Assurance Section MN/OH

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

MORGAN ADVANCED CERAMICS
INC.

Respondent.

Docket No.

~~CAA-95-~~ 2004 0057

Consent Agreement and Final Order

CONSENT AGREEMENT AND FINAL ORDER

I. Jurisdictional Authority

1. This is a civil administrative action instituted and settled pursuant Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.34 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), brings this administrative action seeking civil penalties under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

3. The Respondent is Morgan Advanced Ceramics Inc., (Morgan) a Delaware corporation doing business in Ohio.

II. Regulatory Background

A. National Emission Standards for Halogenated Solvent Cleaning

4. On December 2, 1994, in accordance with Section 112(b) of the Act, U.S. EPA promulgated National Emissions Standards for Halogenated Solvent Cleaning, codified at 40 C.F.R. Part 63, Subpart T. 59 Fed. Reg. 61805.

5. Pursuant to 40 C.F.R. § 63.460(a), the provisions set forth at 40 C.F.R Part 63, Subpart T, apply to each solvent cleaning machine that uses a solvent, as a cleaning and/or drying agent, in a total concentration greater than five percent by weight of any one or any combination of the following halogenated hazardous air pollutant (HAP) solvents: methylene chloride, perchloroethylene, trichloroethylene, 1,1,1, - trichlorethane, carbon tetrachloride, or chloroform,

or any combination of these halogenated HAP solvents.

6. The regulation at 40 C.F.R. § 63.460(c) states that each solvent cleaning machine subject to 40 C.F.R. Part 63, Subpart T, that commences construction or reconstruction after November 29, 1993, shall achieve compliance with the provisions of that subpart immediately upon startup or by December 2, 1994, whichever is later.

7. The regulation at 40 C.F.R. § 63.464 provides an alternative to meeting the requirements of Section 63.463. If an owner or operator elects to comply with the alternative standards at Section 63.464, the owner or operator can elect to comply with the requirements in Section 63.464(a)(1) or (a)(2).

8. The regulation requires, at 40 C.F.R. § 63.464(a)(1)(i), that the owner or operator maintain a log of solvent additions and deletions for each solvent cleaning machine.

9. The regulation requires, at 40 C.F.R. § 63.464(a)(1)(ii), that the owner or operator of each batch vapor solvent cleaning machine ensure that emissions are less than or equal to the applicable emission limit presented in Table 5 of Subpart T.

10. The regulation requires, at 40 C.F.R. § 63.464 (b), that each owner or operator of a batch cleaning machine complying with Section 63.464(a) demonstrate compliance with the applicable three-month rolling average monthly emission limit on a monthly basis as described in Section 63.456(b) and (c).

11. The regulation states, at 40 C.F.R. § 63.464(c), that if the applicable three-month rolling average emission limit is not met, an exceedance has occurred. All exceedances shall be reported as required in Section 63.468(h).

12. The regulation at 40 C.F.R. § 63.4(a)(1) states that no owner or operator subject to the provisions of [Part 63] may operate any affected source in violation of the requirements of this part.

13. The regulation at 40 C.F.R. § 63.4(a)(2) states that no owner or operator subject to the provisions of [Part 63] shall fail to keep records, notify, report, or revise reports as required under this part.

B. SIP Regulatory Authority

14. U.S. EPA approved the Ohio Administrative Code (OAC) Chapter 3745-35-02(A) as part of the federally enforceable Ohio State Implementation Plan (SIP) on June 10, 1982. 47 Fed. Reg. 25145.

15. OAC 3745-35-02(A) requires that...no person may cause, permit, or allow the operation or other use of any air contaminant source without applying for and obtaining a permit to operate from the Ohio Environmental Protection Agency in accordance with the requirements of that rule.

C. Ohio Title V Permitting Program

16. Title V of the Act, 42 U.S.C. § 7661 *et seq.*, established an operating permit program for major sources of air pollution. Section 502(d) of the Act, 42 U.S.C. § 7661a(d), provides that each state must submit to the Administrator of U.S. EPA a permit program meeting the requirements of Title V.

17. Pursuant to Section 502(b) of the Act, 42 U.S.C. § 7661a(b), the Administrator promulgated regulations, codified at 40 C.F.R. Part 70, providing for the establishment of a Title V permitting program.

18. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), states that it is unlawful for any person to operate a major source or a source subject to standards or regulations under Section 112 of the Act, except in compliance with a permit issued by the permitting authority under Title V of the Act.

19. Section 503(a) of the Act, 42 U.S.C. § 7661b(a), states that any source specified in Section 502(a), in this case a major source or a source subject to a regulation under Section 112 of the Act, shall become subject to a permit program, and required to have a permit on the latter of the following dates: (1) the effective date of a permit program applicable to the sources; or (2) the date such source becomes subject to Section 502(a).

20. Section 503(c) of the Act, 42 U.S.C. § 7661b(c), states that no later than 12 months from the date on which the source becomes subject to an approved permit program, any person required to have a permit shall submit to the permitting authority a compliance plan and application for a permit.

21. 40 C.F.R. § 70.5(a) requires that each source subject to Part 70 submit a timely application within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish.

22. 40 C.F.R. § 70.7(b) prohibits a source, which is subject to 40 C.F.R. Part 70, from operating except in compliance with a permit issued under a 40 C.F.R. Part 70 program.

23. U.S. EPA promulgated final approval of the Ohio Title V program on August 15, 1995 (60 Fed. Reg. 42045), and the program became effective on October 1, 1995.

24. The Ohio Title V program required that, for subject sources located in Cuyahoga County, the permit application was due no earlier than 181 days after October 1, 1995 and no later than October 1, 1996.

25. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), authorizes the Administrator to issue an administrative penalty order whenever, among other things, the Administrator finds that any person has violated or is in violation of a requirement or prohibition of Title V of the Act, or any rule promulgated, issued or approved under Title V of the Act, and whenever the Administrator finds that any person has violated or is in violation of Section 112 of the Act, 42 U.S.C. § 7412, and the regulations promulgated thereunder. The Administrator has delegated this authority to the Director of the Air and Radiation Division.

26. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), authorizes the Administrator to issue an administrative penalty order whenever the Administrator finds that any person has violated any requirement or prohibition of a SIP. The Administrator has delegated this authority to the Director of the Air and Radiation Division.

27. Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative action.

28. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

III. Stipulations

29. Respondent is a "person" as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

30. Respondent owns and operates a manufacturing facility, located at 232 Forbes Road, Bedford, Ohio. The facility manufactures advanced piezoelectric ceramic materials and components. As part of the manufacturing process, the company uses degreasers that use perchloroethylene to clean parts. Perchloroethylene is a hazardous air pollutant.

31. Between October 1, 1995, and the present time, Morgan owned and operated three batch vapor degreasers at its facility.

32. Each of the three degreasers used perchloroethylene in a total concentration greater than five percent by weight as a cleaning and/or drying agent.

33. The degreasers were subject to the provisions of 40 C.F.R. Part 63, Subpart T.

34. Based on exception reports, bi-annual reports, and annual reports submitted for calendar years 1999 through 2003, Morgan reported exceedances of the emission limit at 40 C.F.R. § 63.464(a)(1)(ii) for portions of the time period 1999 through 2003.

35. The exceedances identified in paragraph 34, above, also violated the requirements at 40 C.F.R. §§ 63.4(a)(1) and 63.464(b).

36. In an exception report dated April 23, 2004, Morgan reported it had overestimated the volume of perchloroethylene added to the degreaser identified in its reports as Ohio EPA ID # P019, Finishing Equipment S/N6342, in violation of OAC-35-02(A).

37. The failure to maintain an accurate log of solvent additions is a violation of the requirements of 40 C.F.R. §§ 63.464(a)(2) and (a)(1)(i).

38. Morgan submitted an application for a Title V permit for its facility in 1996, but later withdrew that application.

39. Morgan's operation of its facility after October 1, 1996, without a Title V permit is a violation of Section 502(a) of the Act, 42 U.S.C. § 7661a(a).

40. Morgan installed and commenced operation of a Baron Blakeslee - MLR 280 degreaser, identified as L001, in December 1997.

41. Morgan failed to submit, in a timely fashion, an application for a Title V permit for

degreaser L001.

42. Morgan installed degreaser XLE3-WB2, identified as P019, in August of 1999.

43. Morgan failed to submit, in a timely fashion, an application for a Title V permit for degreaser P019.

44. Morgan's operation of degreasers L001 and P019 without Title V permit is a violation of Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and 40 C.F.R. §§70.5(a) and 70.7(b).

45. Morgan's failure to timely submit applications for permits for degreasers L001 and P019 to the State of Ohio is a violation of Section 503(c) of the Act, 52 U.S.C. § 7661b(c), and 40 C.F.R. §§ 70.5(a) and 70.7(b).

46. On November 17, 2003, Stephen Rothblatt, Director, Air and Radiation Division, Region 5, issued to Morgan a Notice of Violation pursuant to Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), and a Finding of Violation, alleging violations of the applicable NESHAP for Halogenated Solvent Cleaning, 40 C.F.R. § 63.460-469, and the Ohio SIP for permits to operate, Ohio Administrative Code Chapter 3745-35-02(A).

47. U.S. EPA and Morgan held a conference on December 18, 2003, to confer about the Notice of Violation and Finding of Violation.

48. On July 2, 2004, Stephen Rothblatt, Director, Air and Radiation Division, Region 5, issued a Finding of Violation to Morgan, alleging violations of Section 502(a) of the Act, 42 U.S.C. § 7661a(a).

49. On August 17, 2004, U.S. EPA and Morgan held a conference to confer about the Finding of Violation.

IV. Violations

50. For portions of the time period 1999 through 2003, Morgan's degreasers exceeded the emission limit at 40 C.F.R. §63.464(a)(1)(ii).

51. The exceedances identified, above, also constitute violations of 40 C.F.R. §§ 63.4(a)(1) and 63.464(b).

52. Morgan's failure to maintain an accurate log of the volume of perchlorethylene added to the degreaser identified in its reports as Ohio EPA ID # P019, Finishing Equipment S/N6342, is a violation of 40 C.F.R. §§ 63.464(a)(2) and (a)(1)(i).

53. Morgan's operation of its facility after October 1, 1996, without a Title V permit is a violation of Section 502(a) of the Act, 42 U.S.C. § 7661a(a).

54. Morgan's operation of degreasers L001 and P019 without a Title V permit is a violation of Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and 40 C.F.R. §§ 70.5(a) and 70.7(b).

V. Terms of Settlement

55. The parties agree that settling this action is in the public interest, that the entry of this Consent Agreement and Final Order (CAFO) without the filing of a complaint or engaging in further litigation is the most appropriate means of resolving this matter, and that the purpose of this CAFO is to ensure compliance with the Act.

NOW, THEREFORE, before the taking of any testimony upon the alleged violations, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered as follows:

56. This settlement is pursuant to, and in accordance with, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

57. Morgan admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations.

58. Morgan consents to the issuance of this CAFO and the assessment of a civil penalty, as set forth in Section VI of this CAFO.

59. Morgan consents to all of the conditions in this CAFO.

60. Morgan waives its right to a hearing as provided at 40 C.F.R. § 22.15(c).

61. Morgan waives its right to contest the allegations in this CAFO, and waives its right to appeal under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

62. Morgan certifies that it is complying fully with the provisions of the Act.

63. This CAFO constitutes a settlement by U.S. EPA of civil penalties pursuant to Section 113 of the Act, 42 U.S.C. § 7413, for the violations alleged in Section IV of this CAFO. Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of Morgan arising from the violations alleged in this CAFO or liability related to other violations of the Act. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by U.S. EPA, and

it is the responsibility of Morgan to comply with such laws and regulations.

64. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

65. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO.

66. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.

VI. Civil Penalty

67. Pursuant to Section 113(e) of the Act, 42 U.S.C. § 7413(e), in determining the amount of the penalty assessed, U.S. EPA took into account (in addition to such other factors as justice may require), the size of Respondent's business, the economic impact of the penalty on Respondent's business, Respondent's full compliance history and good faith efforts to comply, the duration of the violations, the economic benefit of noncompliance, and the seriousness of the violations. Based on an analysis of the above factors, including Respondent's cooperation and prompt return to compliance, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$133,342.

68. Morgan must pay the \$133,342 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," in accordance with paragraph 69 and 70, below, within 30 days after the effective date of this CAFO.

69. Morgan must send the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

70. A transmittal letter stating Respondent's name, complete address, the case docket number and the billing docket number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk (E-19J)

U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Attn: Compliance Tracker (E-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Susan Tennenbaum (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3509

71. This civil penalty is not deductible for federal tax purposes.

72. If Morgan does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

73. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Morgan will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Morgan will pay a quarterly nonpayment penalty each quarter that the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

VII. General Provisions

74. Nothing in this CAFO restricts U.S. EPA's authority to seek Morgan's compliance with the Act and other applicable laws and regulations.

75. This CAFO does not affect Morgan's responsibility to comply with the Act and other applicable federal, state and local laws and regulations.

76. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's

Clean Air Act Stationary Source Civil Penalty Policy” to determine Morgan’s “full compliance history” under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

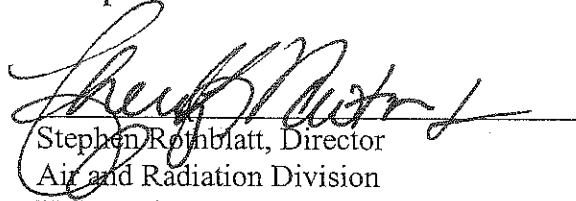
77. The terms of this CAFO bind Morgan and its successors and assigns.

78. This CAFO constitutes the entire agreement between the parties.

**U.S. Environmental Protection Agency,
Complainant**

Date: _____

9/29/04



Stephen Reinblatt, Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5

**Morgan Advanced Ceramics, Inc.,
Respondent**

Date: _____

9/28/04



Peter Morten, Vice President
Morgan Advanced Ceramics Inc.

CAA-05- 2004 0057

CONSENT AGREEMENT AND FINAL ORDER

Morgan Electro Ceramics, Inc.

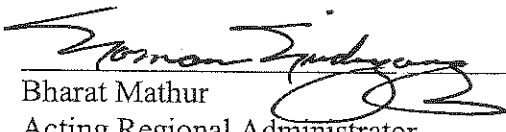
Docket No.

CAA-05- 2004 0057

Final Order

It is ordered as agreed to by the parties and as stated in the Consent Agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk.

9/30/04
Date


for Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I hand delivered the original of the Consent Agreement and Final Order, docket Number CAA-05- 2004 0057 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed a correct copy by first-class, postage prepaid, certified mail, return receipt requested, to Peter Morten by placing it in the custody of the United States Postal Service addressed as follows:

Peter Morten, Vice-President
Morgan Advanced Ceramics, Inc.
232 Forbes Road
Bedford, Ohio 44146

on the 1ST day of October 2004.

RECEIVED
SEP 30 2004

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Loretta Shaffer
Loretta Shaffer, Secretary
AECAS (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 1558 5274